

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of ARM)	NOTICE OF PUBLIC HEARING
36.17.601 through 36.17.606 and the)	ON PROPOSED REPEAL AND
adoption of New Rules I through VII)	ADOPTION
regarding the application procedures)	
and loan requirements of the)	
Renewable Resources Grant and Loan)	
Program)	

To: All Concerned Persons

1. On March 21, 2012, at 2:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Bannack Conference Room (bottom floor), 1625 Eleventh Avenue, Helena, Montana, to consider the proposed repeal and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Pam Smith, Montana Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620, telephone (406) 444-6839, fax (406) 444-2684 e-mail pamsmith@mt.gov.

3. The department proposes to repeal the following rules:

36.17.601 APPLICATION FEES

AUTH: 85-1-612, MCA
IMP: 85-1-612, 85-1-616, MCA

36.17.602 APPLICATION FORM AND CONTENT

AUTH: 85-1-612, MCA
IMP: 85-1-612, 85-1-616, MCA

36.17.603 RANKING CRITERIA TO BE USED TO EVALUATE PUBLIC
GRANT APPLICATIONS AND PRIORITIZE PUBLIC GRANTS RECOMMENDED
FOR FUNDING

AUTH: 85-1-612, MCA
IMP: 85-1-601, 85-1-605, 85-1-612, 85-1-616, MCA

36.17.604 APPLICATION OF CRITERIA FOR AWARD OF GRANTS AND LOANS TO PRIVATE APPLICANTS

AUTH: 85-1-612, MCA

IMP: 85-1-610, 85-1-612, 85-1-616, MCA

36.17.605 TERMS AND CONDITIONS FOR GRANT AND LOAN AGREEMENTS

AUTH: 85-1-612, MCA

IMP: 85-1-605, 85-1-613, 85-1-616, 85-1-617, MCA

36.17.606 ARRANGEMENTS FOR OBTAINING SECURITY INTERESTS

AUTH: 85-1-612, MCA

IMP: 85-1-613, 85-1-615, 85-1-616, MCA

REASONABLE NECESSITY: ARM 36.17.601 through 36.17.603, 36.17.605, and 36.17.606 are being repealed because their text has been integrated within the text of New Rules I through VII. That integration gives the new rules more clarity and, to help avoid confusion, places the definitions rule as the first active rule in the subchapter. ARM 36.17.604 is being repealed to avoid the potential of conflicts with the statutory content of 85-1-606, 85-1-609, and 85-1-610, MCA.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply unless the context requires otherwise:

(1) "Act" or "RRGL program" means the statutes establishing the Renewable Resource Grant and Loan Program (RRGL) in Title 85, chapter 1, part 6, MCA.

(2) "Applicant" means the following who submit an application under the act, meeting the purposes and policies of the act pursuant to 85-1-601, MCA:

(a) a local governmental or state governmental entity eligible under 85-1-605, MCA;

(b) a tribal government eligible under 85-1-605, MCA; or

(c) a private person that is an individual, association, partnership, corporation, or other governmental entity that is not eligible for loans and grants under 85-1-605, MCA.

(3) "Application" means an application for a renewable resource grant or loan submitted by an applicant in accordance with the act and the rules adopted pursuant to the act.

(4) "Bureau" means the Resource Development Bureau of the Department of Natural Resources and Conservation.

(5) "Conservation" means the promotion of efficient and/or sustainable use of a renewable resource.

(6) "Department" means the Department of Natural Resources and Conservation provided for in Title 2, chapter 15, part 33, MCA.

(7) "Development" means a new beneficial and sustainable use of a renewable resource.

(8) "Director" means the director of the Department of Natural Resources and Conservation as provided for under 2-15-3301, MCA.

(9) "Management" means activities that improve governing entities' ability to control and administer a renewable resource.

(10) "Preservation" means the protection of a renewable resource from pollution, destruction, or neglect.

(11) "Program costs" means nonreimbursable costs not directly related to the project. Program costs include, but are not limited to:

(a) office rent that will be incurred whether or not the project is implemented;

(b) salaries of existing fully funded staff positions unless the work-hours associated with the project are accounted for; or

(c) any other costs that pay for ongoing or general services of the applicant.

(12) "Project costs" means costs that will be incurred only by implementing the project described in the application, and whose funding source is:

(a) RRGL program funds;

(b) matching dollars; or

(c) in-kind contributions.

(13) "Public benefits" means a benefit that accrues to the common well-being, safety, health, or welfare of the citizens of Montana from a renewable resource project including, but not limited to the benefits that accrue to an applicant.

(14) "Public resource" means land, air, water, fish, wildlife, and recreation opportunities.

(15) "Renewable resource" means a sustainable natural resource including water, wind, renewable energy, soil, wetlands, fish and aquatic habitat, wildlife habitat, range land, crop land, and forests.

(16) "Renewable resource grant" means a project grant approved by the Legislature for the enhancement of a renewable resource meeting the objectives of 85-1-602, MCA.

(17) "Renewable resource project" or "project" as used in conjunction with Title 85, chapter 1, part 6, MCA, means any activity or development that conserves, develops, manages, or preserves a renewable resource; and does not result in a long-term adverse impact to land, air, water, fish, wildlife, or recreation opportunities.

(18) "Renewable resource planning grant" means a grant to provided funding for any preliminary or planning activity that would contribute to a renewable resource project as determined by the bureau. Examples include, but are not limited to grants to provide funding for preliminary engineering reports, resource assessments, or technical reports.

AUTH: 85-1-612, MCA

IMP: 85-1-612, MCA

REASONABLE NECESSITY: New Rule I is reasonably necessary to provide definitions for terminology used within the context of this subchapter for the administration of the Renewable Resource Grant and Loan Program as enacted in Title 85, chapter 1, part 6, MCA.

NEW RULE II APPLICATION FEES AND DUE DATE (1) An applicant shall submit an application fee with each application.

(a) A governmental or tribal applicant shall pay a \$250 nonrefundable application fee for each renewable resource grant, small loan, and/or large loan application submitted.

(b) A private applicant shall pay a \$150 nonrefundable application fee for each loan application submitted.

(2) All applications submitted to the bureau must be postmarked on or before May 15 or the next business day if May 15 falls on a Sunday or a federal holiday and post offices are closed. Electronic application submissions will not be accepted.

AUTH: 85-1-612, MCA

IMP: 85-1-612, 85-1-616, MCA

REASONABLE NECESSITY: New Rule II incorporates the text from ARM 36.17.601 and corrects some minor grammatical errors. It also clarifies the date by, and manner in which, all applications must be submitted to the department. New Rule II is reasonably necessary to administer the requirements of the Renewable Resource Grant and Loan Program as enacted in Title 85, chapter 1, part 6, MCA.

NEW RULE III APPLICATION FORM AND CONTENT (1) Governmental, tribal, and private grant and/or loan applicants shall submit applications according to these rules and the guidelines published by the bureau.

(a) Application guidelines may be obtained from, and completed applications must be submitted with supporting documentation to, the Resource Development Bureau, Conservation and Resource Development Division, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620-1601.

(2) The application requirements for governmental and tribal applicants as described in the guidelines must include at a minimum:

(a) an authorizing statement signed by an authorized representative of the applicant;

(b) a proposal abstract providing a brief project description stating how the project's benefits support the RRGL program purpose;

(c) a renewable resource and public benefits narrative describing how and to what extent a project benefits a renewable resource under the RRGL program pursuant to the purposes of the program stated in 85-1-601, MCA. A project that does not further the state's purposes as stated in 85-1-601(2), MCA, is ineligible for a grant;

(d) a technical narrative documenting the technical feasibility of the project. A project that is not technically feasible is ineligible for a grant or loan;

(e) a project management plan explaining how the project and the grant will be managed. An application that does not demonstrate the applicant's ability to manage the grant project is ineligible for a grant or loan;

(f) a financial feasibility narrative demonstrating that the funding is obtainable to complete the project and that the project can be completed within the proposed budget. A financial feasibility narrative must include:

(i) project costs that will be reimbursed with grant or loan funds; and
(ii) program costs that are not reimbursable costs and may not be included as project costs. An application that does not document financial feasibility is ineligible for a grant or loan;

(g) an environmental narrative and checklist evaluating the potential environmental impact of the project and each project alternative with identification of mitigation measures. An application that does not have a complete environmental narrative and checklist is ineligible for consideration; and

(h) if applicable, a narrative describing how the project will implement the state water plan.

(3) Upon receipt of an application, the bureau will review the application.

(a) An application submitted by a governmental agency must be signed by the agency head. An application is not complete if it is filed without the written authorization of the agency head. If the application is incomplete, it shall be returned to the agency and the fee shall not be returned.

(4) Any application returned under this rule may not be resubmitted in the same cycle in which it was returned.

AUTH: 85-1-612, MCA

IMP: 85-1-612, 85-1-616, MCA

REASONABLE NECESSITY: New Rule III incorporates the text from ARM 36.17.602. It amends that original language to lay out specific details and requirements of applications that are submitted to the department. New Rule III is reasonably necessary to administer the requirements of the Renewable Resource Grant and Loan Program as enacted in Title 85, chapter 1, part 6, MCA.

NEW RULE IV CRITERIA FOR RANKING GOVERNMENTAL AND TRIBAL RENEWABLE RESOURCE GRANT APPLICATIONS (1) For each grant cycle, the bureau shall publish with its guidelines the numerical points to be awarded.

(2) Points are awarded and deducted based on the following criteria.

(a) Points must be awarded for renewable resource benefits related to the project. If a project has no renewable resource benefits, it is ineligible for a grant.

(b) Points must be awarded for public benefits. If a project has no public benefits, it is ineligible for a grant.

(c) Tie breaker preference must be given to projects that have an equal score and that:

(i) implement the state water plan priorities; and/or

(ii) will mitigate human health or safety problems.

(d) No points may be awarded for financial feasibility. Points will be deducted for errors or omissions in this section. If a project is determined to not be financially feasible, it is ineligible for a grant.

(e) If a project is determined to have adverse environmental impacts that cannot be mitigated and do not preserve the state's renewable resources per 85-1-601, MCA, it is ineligible for a grant.

(f) No points may be awarded for technical feasibility. Points will be deducted for errors or omissions in this section. If a project is determined to not be technically feasible, it is ineligible for a grant. Technical feasibility includes, but is not limited to:

- (i) adequacy of the alternative analysis;
- (ii) adequacy of cost estimates for potential alternatives and the preferred alternative;
- (iii) preferred alternative selection;
- (iv) thoroughness and feasibility of the project's implementation plan and schedules; and
- (v) quality of supporting technical data submitted with the application.

(g) Points may be deducted from applications for which there have been past management problems, prior project completion issues, or such other concerns as identified in the published guidelines for the grant cycle. If a management plan is not adequate to support the project, it is ineligible for a grant.

(3) Applications shall be assigned a net ranking score based on the points gained or lost. Once the applications have been ranked, the bureau shall review all of the rankings and shall recommend to the director a funding priority list of all of the applications.

(a) The priority list will be used to determine department funding recommendations and will be incorporated in a report to the Legislature recommending government and tribal grant applications for funding and the amount of grant award suggested.

(b) Funding recommendations are made to maximize benefit to Montanans and will be based on the total amount of grant funds available, the amount of grant funds requested, and the total project cost.

AUTH: 85-1-612, MCA

IMP: 85-1-601, 85-1-605, 85-1-612, 85-1-616, MCA

REASONABLE NECESSITY: New Rule IV incorporates the text from ARM 36.17.603. It amends that original language to clarify the specific criteria used for ranking government or tribal renewable resource grant applications. New Rule IV is reasonably necessary to administer the requirements of the Renewable Resource Grant and Loan Program as enacted in Title 85, chapter 1, part 6, MCA.

NEW RULE V RENEWABLE RESOURCE GOVERNMENTAL AND TRIBAL PLANNING GRANTS (1) Funds for renewable resource planning grants are limited by legislative appropriation.

(2) Renewable resource planning grants provide funding for preliminary engineering reports, resource assessments, technical reports, or any planning activity that would contribute to a renewable resource project as determined by the bureau. Funding may also be awarded in the form of administrative grants.

(3) No application fee is required for the submission of a public planning grant.

(4) Public planning grant applicants shall submit applications in the form prescribed, and according to the guidelines published by the bureau.

(5) The bureau shall evaluate an application for a public planning grant on the basis of how well the application content explains and meets the objectives of the RRLG program.

AUTH: 85-1-612, MCA

IMP: 85-1-612, 85-1-616, MCA

REASONABLE NECESSITY: ARM 36.17.601 through 36.17.606, which the department is proposing to repeal, while incorporating the text into these new rules, did not contain submission requirements for renewable resource planning grants. New Rule V is reasonably necessary to clarify what those requirements are, and to administer the requirements of the Renewable Resource Grant and Loan Program as enacted in Title 85, chapter 1, part 6, MCA.

NEW RULE VI TERMS AND CONDITIONS FOR GRANT AND LOAN AGREEMENTS WITH GOVERNMENTAL, TRIBAL, AND PRIVATE RECIPIENTS

(1) Successful governmental, tribal, and private grantees must enter into a written agreement with the bureau if the grantee wishes to continue the grant process. The written agreement must contain clear specifications for the work to be completed and a budget and other appropriate terms and conditions governing the performance of the grantee.

(2) The grantee shall document all project costs to be paid or reimbursed, and those to be credited as matching contributions.

(3) Grant funds that are not spent for the approved project must be returned to the renewable resource state special revenue account for use as directed by appropriation.

(4) Grant agreements with tribal governments in Montana must contain, in addition to other appropriate terms and conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government.

(5) For successful governmental loans the borrower shall:

(a) furnish a bond resolution which contains the specific requirements and covenants with respect to the project financed from the loan proceeds; and

(b) enter into an agreement which:

(i) allows the department to purchase the applicant's bond or bond anticipation note, with the amount specified;

(ii) stipulates the terms of repayment and interest rates and fees to be paid by the borrower;

(iii) specifies the work to be completed;

- (iv) specifies insurance requirements and inspection requirements; and
- (v) specifies the conditions for the disbursement of funds.
- (6) Loan agreements with tribal governments in Montana must contain, in addition to other appropriate terms and conditions:
 - (a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;
 - (b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan; and
 - (c) an express waiver of any right to exhaust tribal remedies signed by the tribal government.
- (7) For successful private loans, the borrower shall furnish title insurance showing ownership of land, mortgages, encumbrances, or other lien defects; and shall enter into a loan agreement with the department prior to project construction or equipment purchase. The loan agreement will:
 - (a) specify the loan administration fee;
 - (b) contain clear specifications for the work to be completed;
 - (c) stipulate a budget to be consistent with the application;
 - (d) specify provisions for the disbursement and repayment, including principal and interest of loan funds;
 - (e) describe the collateral provided to secure the loan;
 - (f) prescribe remedies for borrower delinquency or default in repayment; and
 - (g) specify that the recipient agrees to comply with Montana contracting and procurement laws applicable to state and federal agencies, counties, and municipalities. The agreement may provide specific guidance on compliance but may not waive compliance with the contracting or procurement laws.

AUTH: 85-1-612, MCA

IMP: 85-1-605, 85-1-613, 85-1-616, 85-1-617, MCA

REASONABLE NECESSITY: New Rule VI incorporates the text from ARM 36.17.605 with minor formatting and grammatical changes, and specifies grant and loans requirements that apply specifically to governmental, tribal, and private recipients. The rule also clarifies that loan recipients must comply with applicable Montana contracting and procurement laws. New Rule VI is reasonably necessary to administer the requirements of the Renewable Resource Grant and Loan Program as enacted in Title 85, chapter 1, part 6, MCA.

NEW RULE VII ARRANGEMENTS FOR OBTAINING SECURITY INTERESTS (1) For loans to private applicants the borrower shall provide security which is at least equal to 125% of the principal value of the loan.

(2) Private borrowers shall provide security with:

- (a) a first or second real estate mortgage;
- (b) an assignment of accounts receivable;
- (c) certificates of deposit or similar securities;
- (d) a turn off authority; or

- (e) other security as accepted by the department.
- (3) Private water users association or ditch company borrowers may provide security in the following manner, which may be in addition to any security items listed in (2):
 - (a) a lien on the shares of stock in the association;
 - (b) a lien on the revenues of the association;
 - (c) a lien on the accounts receivable of the association; and/or
 - (d) a lien on any water purchase agreements of the association.
- (4) At the department's request, the private borrower shall also provide an appraisal of the real property used as security for the loan.
- (5) A partial release of lien may be granted by the department upon written request of the private borrower if the remaining security is at least equal to 125% of the outstanding principal value of the loan and the department establishes that the loan will remain adequately secured.
- (6) The private borrower shall be apprised of state law governing foreclosure on delinquent loans at the time of loan closure.

AUTH: 85-1-612, MCA

IMP: 85-1-613, 85-1-615, 85-1-616, MCA

REASONABLE NECESSITY: New Rule VII incorporates the text from ARM 36.17.606 with minor formatting and grammatical changes. New Rule VII is reasonably necessary to administer the requirements of the Renewable Resource Grant and Loan Program as enacted in Title 85, chapter 1, part 6, MCA.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Pam Smith, Montana Department of Natural Resources and Conservation; 1625 Eleventh Avenue, Helena, MT 59620; telephone (406) 444-6839; fax (406) 444-2684; e-mail pamsmith@mt.gov, and must be received no later than 5:00 p.m. March 22, 2012.

6. Pam Smith, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Repeal and Adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Repeal and Adoption conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the

person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Kevin Peterson

KEVIN PETERSON

Rule Reviewer

Certified to the Secretary of State on February 13, 2012.